

2014 MAR 27 10:51 AM  
BEFORE THE UNITED STATES  
FEDERAL ELECTION COMMISSION

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215 E Street, NE  
Washington, DC 20002  
(202) 736-2200

Democracy 21  
2000 Massachusetts Avenue, NW  
Washington, DC 20036  
(202) 355-9600

v.

MUR No.

6801

Senate Majority PAC  
700 13<sup>th</sup> Street, NW  
Suite 600  
Washington, DC 20005

COMPLAINT

1. This complaint is filed pursuant to 2 U.S.C. § 437g(a)(1) and is based on information and belief that Senate Majority PAC ("SMP") (ID#C00484642), an independent expenditure-only committee, made an in-kind contribution to Braley for Iowa (ID#C00541417), the principal campaign committee of Rep. Bruce L. Braley, a candidate for the U.S. Senate, in violation of provisions of the Federal Election Campaign Act ("FECA"), 2 U.S.C. § 431, *et seq.*, and Commission regulations.
2. Specifically, based on published reports, complainants have reason to believe that SMP financed the dissemination, distribution, or republication of campaign materials prepared by candidate Bruce Braley, Braley for Iowa, and/or agent(s) of Bruce Braley and/or Braley for Iowa. Under 11 C.F.R. § 109.23(a), such financing "shall be considered a

contribution for the purposes of contribution limitations and reporting responsibilities of the person making the expenditure"—i.e., shall be considered a contribution by SMP.

3. As an independent expenditure-only committee, SMP is prohibited from contributing to congressional candidate Bruce Braley and the Braley for Iowa committee. *See* AO 2010-11 (Commonsense Ten).
4. "If the Commission, upon receiving a complaint . . . has reason to believe that a person has committed, or is about to commit, a violation of [the FECA] . . . [t]he Commission shall make an investigation of such alleged violation . . . ." 2 U.S.C. § 437g(a)(2); *see also* 11 C.F.R. § 111.4(a) (emphasis added).

#### FACTS

5. On February 8, 2005, Bruce Braley filed a Statement of Candidacy as a candidate for the 2006 U.S. House of Representatives election in Iowa's 1<sup>st</sup> District, as well as a Statement of Organization establishing Braley for Congress (ID#C00409441) as his principal campaign committee. Bruce Braley has served in the U.S. House of Representatives since 2007.
6. On February 8, 2013, Bruce Braley filed a Statement of Candidacy as a candidate for the 2014 U.S. Senate election in Iowa, as well as a Statement of Organization establishing Braley for Iowa as his principal campaign committee.
7. On July 18, 2013, the Commission approved Bruce Braley's termination of Braley for Congress.
8. On June 11, 2010, SMP filed with the Commission a Form 1 Statement of Organization under its prior name, Commonsense Ten, as a nonconnected unauthorized political committee.

9. Also on June 11, 2010, SMP filed Advisory Opinion Request (AOR) 2010-11, indicating that it intended to “sponsor and pay for independent expenditures” and that it “will not make any direct or in-kind contributions to federal candidates; political party committees; or any other federal political committee that does make contributions to federal candidates or political party committees.” AOR 2010-11 at 3. Citing the court decisions in *SpeechNow.org v. FEC*, 599 F.3d 686 (D.C. Cir. 2010) (*en banc*) and *Citizens United v. FEC*, 558 U.S. 310 (2010), SMP indicated its intention to “solicit and accept contributions from corporations and labor organizations” as well as contributions “from individuals and other federal political committees in excess of \$5,000 per calendar year[.]” *Id.* SMP sought confirmation that its planned course of action complies with federal campaign finance law. *Id.* at 7.
10. On July 22, 2010, the Commission issued Advisory Opinion (AO) 2010-11, concluding that SMP’s “planned course of action complies with the Act”—recognizing SMP as an independent expenditure-only political committee (a.k.a. super PAC). The Commission emphasized that its opinion hinged on SMP’s representation that it “will not make any monetary or in-kind contributions to any other political committee or organization.” AO 2010-11 at 2.
11. According to reports filed with the Commission, SMP has in fact accepted contributions from corporations and labor organizations, as well as contributions in excess of \$5,000 from individuals.<sup>1</sup>
12. On February 7, 2014, *Roll Call* reported:

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<sup>1</sup> For example, SMP reported receiving: a \$200,000 contribution from the American Federation of State, County and Municipal Employees on May 14, 2013; a \$25,000 contribution from W.P. Malone, Inc. on December 3, 2013; and a \$2.5 million contribution from Michael Bloomberg on July 29, 2013.

Some candidates are . . . conveniently sharing video footage for potential use by independent groups for television ads through links that are sometimes difficult to find unless you know where to look.

For example, Democratic Rep. Bruce Braley is running for the open Senate seat in Iowa. [BruceBraley.com/video](http://BruceBraley.com/video) includes a trio of b-roll videos, but the webpage is found only by a small link at the bottom of the main page.

Need video of Braley talking with old people? No problem. There's "Bruce Braley Stands With Iowa Seniors"—one minute and 23 seconds of gripping b-roll of the congressman with senior citizens layered with smooth elevator music, unencumbered by audio of Braley or a narrator actually talking.

What about the congressman talking with ladies? Got it. "Bruce Braley Will Still Stand Up for Women in Iowa" contains one minute and 16 seconds of fantastic footage—again, without any graphics or audio, other than music.

And finally, what about Braley wearing a blue hard hat or walking in a field with a farmer? Done. "Bruce Braley Will Fight for America's Workers" is one minute and 51 seconds of raw, blue-collar footage of the attorney mingling with regular folk.

On Jan. 28, Senate Majority PAC, the super PAC dedicated to keeping Democratic control of the Senate, started airing "Oil Billionaires" to boost Braley's candidacy. The statewide broadcast and cable ad cost approximately \$240,000 through Feb. 6 and included footage also seen in the b-roll videos.

According to the stamps on YouTube, the b-roll videos were uploaded on Jan. 30, after the Senate Majority PAC ad began, so the footage was likely taken from a two-minute Web video for the congressman's re-election campaign in 2012. But it is no accident that the longer clips are available going forward.<sup>2</sup>

13. The Braley campaign videos referenced in the *Roll Call* article can be found on Bruce Braley's YouTube page.<sup>3</sup> SMP's "Oil Billionaires" ad referenced in the *Roll Call* article can be found on SMP's YouTube page.<sup>4</sup>

<sup>2</sup> Nathan L. Gonzales, *How Candidates Share Without Coordinating With Outside Groups*, ROLL CALL (Feb. 7, 2014) <http://blogs.rollcall.com/rothenblog/how-candidates-share-without-coordinating-with-outside-groups/> (last visited Mar. 17, 2014).

<sup>3</sup> See *Bruce Braley Stands With Iowa's Seniors*, [https://www.youtube.com/watch?v=tLZHVe\\_PbBY#t=43](https://www.youtube.com/watch?v=tLZHVe_PbBY#t=43) (last visited Mar. 17, 2014); *Bruce Braley Will Stand Up for Women in Iowa*, <https://www.youtube.com/watch?v=sRHZnyUfj6I#t=21> (last visited Mar. 17, 2014); *Bruce*

14. Complainants reviewed SMP's "Oil Billionaires" ad, as well as the four videos created by Bruce Braley, Braley for Iowa and/or Braley for Congress. "Oil Billionaires" has a run-time of 30 seconds and contains Braley committee video footage on screen for approximately 16 seconds—from the 6-second mark to the 12-second mark, and from the 20-second mark through the end of the ad.
15. On January 30, 2014, SMP reported to the Commission \$241,329 in independent expenditures supporting Bruce Braley. On February 3, 2014, SMP reported to the Commission an additional \$74,786 in independent expenditures supporting Bruce Braley.

#### SUMMARY OF THE LAW

##### **I. REPUBLICATION OF CAMPAIGN MATERIALS**

16. Commission regulation 109.23 provides:

The financing of the dissemination, distribution, or republication, in whole or in part, of any broadcast or any written, graphic, or other form of campaign materials prepared by the candidate, the candidate's authorized committee, or an agent of either of the foregoing shall be considered a contribution for the purposes of contribution limitations and reporting responsibilities of the person making the expenditure.

11 C.F.R. § 109.23(a) (emphasis added).

17. Subsection (b) of section 109.23 provides five exceptions to the general rule treating the financing of republication of campaign materials as a contribution by the republisher—
- (1) republication by the candidate who prepared the material, (2) republication of material by an opponent of the candidate who prepared the material, (3) press exemption,

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*Braley Will Fight for Iowa's Workers* <https://www.youtube.com/watch?v=-NpUxs5wSq0#t=16> (last visited Mar. 17, 2014); *Bruce Braley: Works for Iowa* <https://www.youtube.com/watch?v=ux495Za0rHg> (last visited Mar. 17, 2014).

<sup>4</sup> See *Oil Billionaires* <https://www.youtube.com/watch?v=Qvp4jEMwK7w> (last visited Mar. 17, 2014).

(4) a brief quote of materials that demonstrate a candidate's position as part of a person's expression of its own views, and (5) republication by a party committee as a coordinated expenditure.

18. The Commission explained this rule as follows:

[W]hether or not the dissemination, distribution, or republication qualifies as a coordinated communication under 11 CFR 109.21, paragraph (a) of section 109.23, like former section 109.1(d)(1), requires the person financing such dissemination, distribution, or republication always to treat that financing, for the purposes of that person's contribution limits and reporting requirements, as an in-kind contribution made to the candidate who initially prepared the campaign material. In other words, the person financing the communication must report the payment for that communication if that person is a political committee or is otherwise required to report contributions. Furthermore, that person must count the amount of the payment towards that person's contribution limits with respect to that candidate under 11 CFR 110.1 (persons other than political committees) or 11 CFR 110.2 (multicandidate political committees), and with respect to the aggregate biannual contribution limitations for individuals set forth in 11 CFR 110.5.

*Coordinated and Independent Expenditures*, Final Rules & Explanation & Justification, 68 Fed. Reg. 421, 442 (Jan. 3, 2003) (emphasis added).

19. The Commission went on to explain that a commenter in the rulemaking proceeding had proposed an exception from the rule "to cover republication and distribution of original campaign material that already exists in the public domain, such as presentations made by candidates, biographies, positions on issues or voting records." *Id.* The Commission, however, "decline[d] to promulgate a 'public domain' exception because such an exception could 'swallow the rule,' given that virtually all campaign material that could be republished could be considered to be 'in the public domain.'" *Id.*

## II. CONTRIBUTIONS LIMITS AND RESTRICTIONS

20. Contributions by a non-multicandidate political committee to any candidate and his authorized committees may not exceed, in the aggregate, \$2,600 per election in the 2013-

14 election cycle. See 2 U.S.C. § 441a(a)(1) (adjusted for changes in the Consumer Price Index pursuant to 2 U.S.C. § 441a(c)).<sup>5</sup>

21. Federal law prohibits corporations and labor organizations from making any contribution to a candidate—including any “direct or indirect payment . . . or gift of money, or any services, or anything of value[.]” 2 U.S.C. § 441b(a) and (b)(2) (emphasis added).
22. Generally, contributions from a person to political committees other than candidate and party committees may not exceed, in the aggregate, \$5,000 per calendar year. 2 U.S.C. § 441a(a)(1)(C).
23. However, notwithstanding the prohibition on corporate and labor organization contributions and the \$5,000 limit on contributions from other persons, the Commission in Advisory Opinion 2010-11 (Commonsense Ten) interpreted and applied court decisions in *SpeechNow.org v. FEC*, 599 F.3d 686 (D.C. Cir. 2010) (*en banc*) and *Citizens United v. FEC*, 558 U.S. 310 (2010), and opined that a committee that “intends to make only independent expenditures” and that “will not make any monetary or in-kind contributions (including coordinated communications) to any other political committee or organization” is permitted to solicit and accept unlimited contributions from individuals, corporations, labor organizations and other political committees. AO 2010-11 at 2-3. Conversely, a committee that accepts contributions in excess of the limits from individuals and other political committees, or any contributions from corporations or labor organizations is prohibited from contributing to candidates.
24. For the purposes of contribution limitations, contributions to a candidate also include the “financing of the dissemination, distribution, or republication, in

<sup>5</sup> See *Contribution Limits 2013-14* at <http://www.fec.gov/pages/brochures/contriblimits.shtml>.

whole or in part, of any broadcast or any written, graphic, or other form of campaign materials prepared by the candidate, the candidate's authorized committee, or an agent of either of the foregoing[.]” 11 C.F.R. § 109.23(a).

25. Federal law prohibits candidates and political committees from knowingly accepting any contribution or making any expenditure in violation of federal law and, further, prohibits any officer or employee of a political committee from knowingly accepting any contribution made for the benefit or use of any candidate, or making any expenditure on behalf of a candidate, in violation of any limitation imposed on contributions and expenditures. *See* 11 C.F.R. § 110.9.

### **III. REPORTING AND DISCLOSURE REQUIREMENTS**

26. Federal law requires political committees to report and disclose contributions made to other political committees, as well as contributions received from other political committees. *See* 2 U.S.C. § 434(b).
27. The financing of the dissemination, distribution, or republication, in whole or in part, of any candidate campaign materials “shall be considered a contribution for the purposes of . . . reporting responsibilities of the person making the expenditure.” 11 C.F.R. § 109.23(a).

### **CAUSES OF ACTION**

#### **COUNT I:**

#### **SMP HAS MADE EXCESSIVE AND PROHIBITED CONTRIBUTIONS TO BRALEY FOR IOWA**

28. Based on published reports regarding SMP's “Oil Billionaires” ad, complainants have reason to believe that SMP has spent at least \$240,000 to republish Braley campaign



materials—namely video footage produced by Bruce Braley, Braley for Congress, Braley for Iowa or agent(s) thereof.

29. SMP's use of the Braley video footage does not qualify for the "brief quote" exception to the republication rule because (1) the Braley video footage appears on screen for approximately half of the 30-second ad, which in no way constitutes "brief" use of the footage, and (2) the materials quoted do not "demonstrate a candidate's position as part of a [SMP's] expression of its own views." See 11 C.F.R. § 109.23(b)(4). Nor does SMP's use of the Braley video footage qualify for any other exception to the republication rule. This financing by SMP, therefore, "shall be considered a contribution for the purposes of contribution limitations and reporting responsibilities" of SMP under 11 C.F.R. § 109.23(a) (emphasis added).
30. As an independent expenditure-only committee, SMP is prohibited from making contributions, whether direct, in-kind, or via coordinated communications, to federal candidates or committees. See AO 2010-11.
31. Based on published reports, complainants have reason to believe that, by spending more than \$240,000 to republish campaign materials prepared by Bruce Braley, Braley for Congress, Braley for Iowa or agent(s) thereof, SMP violated the requirement that it not "make contributions, whether direct, in-kind, or via coordinated communications, to federal candidates," AO 2010-11 at 2, violated the \$2,600 limit on contributions by a non-multicandidate political committee to a candidate, 2 U.S.C. § 441a(a)(1), and violated the prohibition on contributions to a candidate using corporation or labor organization funds, 2 U.S.C. § 441b(a) and (b)(2).

**COUNT II:**  
**SMP HAS UNLAWFULLY ACCEPTED CORPORATE CONTRIBUTIONS, LABOR ORGANIZATION  
CONTRIBUTIONS AND CONTRIBUTIONS IN EXCESS OF \$5,000**

32. The Commission's AO 2010-11, concluding that SMP was permitted to accept corporate and labor organization contributions, as well as contributions in excess of \$5,000, was premised on SMP's representation that it would "not make any monetary or in-kind contributions to any other political committee or organization." AO 2010-11 at 2. SMP's in-kind contribution to Braley for Iowa renders AO 2010-11 inapplicable.
33. Based on disclosure reports that SMP has filed with the Commission, complainants have reason to believe that SMP has violated the prohibition on political committee receipt of corporate and labor organization contributions, 2 U.S.C. § 441b(a), as well as the \$5,000 limit on contributions received by non-candidate, non-party committees. 2 U.S.C. § 441a(a)(1)(C).

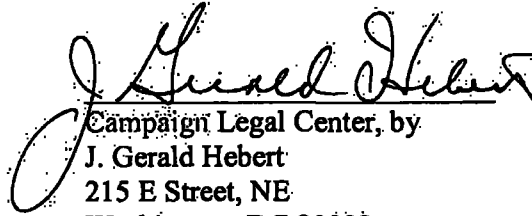
**COUNT III:**  
**SMP HAS FAILED TO REPORT CONTRIBUTIONS TO BRALEY FOR IOWA**

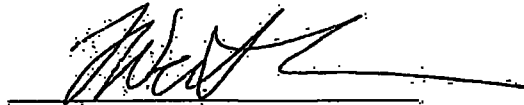
34. Federal law requires political committees to report and disclose contributions made to other political committees. *See* 2 U.S.C. § 434(b).
35. The financing of the republication of candidate campaign materials "shall be considered a contribution for the purposes of . . . reporting responsibilities of the person making the expenditure." 11 C.F.R. § 109.23(a).
36. Based on published reports, as well as disclosure reports SMP has filed with the Commission, complainants have reason to believe that SMP has reported its in-kind contributions to Braley for Iowa as independent expenditures in violation of federal law reporting requirements.

**PRAYER FOR RELIEF**

37. Wherefore, the Commission should find reason to believe that SMP has violated 2 U.S.C. § 431 *et seq.*, including 2 U.S.C. §§ 434, 441a and 441b, and conduct an immediate investigation under 2 U.S.C. § 437g(a)(2). Further, the Commission should determine and impose appropriate sanctions for any and all violations, should enjoin the respondents from any and all violations in the future, and should impose such additional remedies as are necessary and appropriate to ensure compliance with the FECA.

Respectfully submitted,

  
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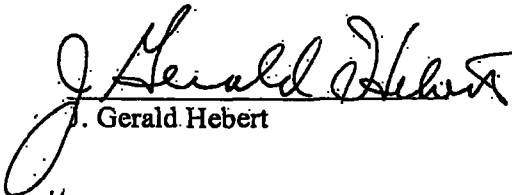
Counsel to Democracy 21

**VERIFICATION**

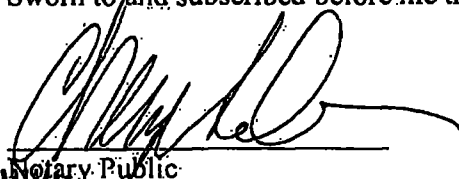
The complainants listed below hereby verify that the statements made in the attached Complaint are, upon their information and belief, true.

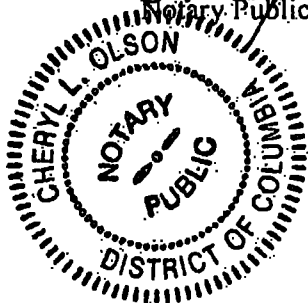
Sworn to pursuant to 18 U.S.C. § 1001.

**For Complainant Campaign Legal Center**

  
Gerald Hebert

Sworn to and subscribed before me this 18th day of March, 2014.

  
Notary Public



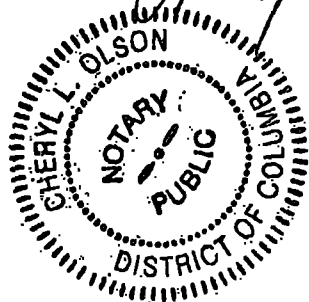
CHERYL L. OLSON  
NOTARY PUBLIC DISTRICT OF COLUMBIA  
My Commission Expires October 31, 2014

**For Complainant Democracy 21**

  
Fred Wertheimer

Sworn to and subscribed before me this 18th day of March, 2014.

  
Notary Public



CHERYL L. OLSON  
NOTARY PUBLIC DISTRICT OF COLUMBIA  
My Commission Expires October 31, 2014